

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVROHOM BLUMING, on behalf of himself
and all other similarly situated consumers,

MEMORANDUM AND ORDER

Plaintiff,

Case No. 1: 18-cv-3517 (FB)(RLM)

-against-

ENHANCED RECOVERY COMPANY, LLC,

Defendant.

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Appearances:

For the Plaintiff:

ADAM J. FISHBEIN, ESQ.
Adam J. Fishbein, P.C.
735 Central Avenue
Woodmere, New York 11598

For the Defendant:

SCOTT S. GALLAGHER, ESQ.
Smith, Gambrell & Russell, LLP
50 N. Laura Street, Suite 2600
Jacksonville, Florida 32202

BLOCK, Senior District Judge:

Defendant Enhanced Recovery Company (“ERC”) brings this motion against Plaintiff’s attorney, Adam Fishbein, for Rule 11 sanctions. ERC claims that Fishbein had no basis in fact or law to bring this lawsuit, and requests sanctions in the form of attorney’s fees for their work on this case. For the following reasons, defendant’s motion is denied.

A pleading or motion violates Rule 11 if it is “frivolous, legally unreasonable, or factually without foundation, even though not signed in subjective bad faith.” *Wechsler v. Hunt Health Sys., Ltd.*, 216 F.Supp.2d 347, 356 (S.D.N.Y. 2002).

Whether to award sanctions pursuant to Rule 11 is subject to the Court's discretion. *See Perez v. Posse Comitatus*, 373 F.3d 321, 325 (2d Cir. 2004).

While the Court granted defendant's unopposed motion to dismiss, the complaint was not frivolous or "objectively unreasonable." *Storey v. Cello Holdings, LLC*, 347 F.3d 370, 392 (2d Cir. 2003). There was, at the very least, "some arguable basis" for plaintiff's claims. *Perez*, 373 F.3d at 324.

As such, the Court, in its discretion DENIES the motion for Rule 11 sanctions.

IT IS SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

August 17, 2020
Brooklyn, New York